Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

JOSEPH CANDELA,

Petitioner,

—against—

DARRYL J. WOODS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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38 pp

QUESTION PRESENTED

Whether the exception recognized by this Court in *Heck v. Humphrey*, 512 U.S. ___, 114 S. Ct. 2364 (1994), for section 1983 actions for damages based on the Fourth Amendment, controls the accrual of all such claims, without requiring invalidation of the conviction, or permits the district court to determine, on a case-by-case basis, whether the claims necessarily demonstrate the invalidity of the plaintiff's conviction, thereby postponing the commencement of the limitation period until such time as the conviction is reversed.

LIST OF PARTIES

The names of all of the parties in the court of appeals appear in the caption of the case.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
THE SECOND CIRCUIT'S DECISION IS IN CONFLICT WITH THE PRINCIPLES ENUNCIATED BY THIS COURT IN *HECK*	5
CONCLUSION	9

TABLE OF AUTHORITIES

Cases	PAGE
Board of Regents v. Tomanio, 446 U.S. 478 (1980)....	2
Deary v. Three Un-named Police Officers, 746 F.2d 185 (3d Cir. 1984)	6
Hackenburg v. Zukowski, 754 F. Supp. 409 (M.D. Pa. 1991)	7
Heck v. Humphrey, 512 U.S. ___, 114 S. Ct. 2364 (1994)	i, 4, 7
Johnson v. Johnson County Commission Board, 925 F.2d 1299 (10th Cir. 1991).....	6
King v. New York Telephone Co., Inc., 785 F.2d 31 (2d Cir. 1986)	6
Mack v. Varelas, 835 F.2d 995 (2d Cir. 1987)	3
McCune v. City of Grand Rapids, 842 F.2d 903 (6th Cir. 1988)	6
Morse v. University of Vermont, 973 F.2d 122 (2d Cir. 1992)	6
Pauk v. Board of Trustees, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982)	6
People v. Woods, 189 A.D.2d 838, 592 N.Y.S.2d 748 (2d Dep't 1993)	2
United States v. Kubrick, 444 U.S. 111 (1979)	6

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the court of appeals on remand from this Court is reported at 47 F.3d 545 (2d Cir. 1995) and is reproduced in the appendix at 1a.[1] The initial opinion of the court of appeals is reported at 13 F.3d 574 (2d Cir. 1994) and is reproduced in the appendix at 4a. The opinion and order of the district court are reported at 825 F. Supp. 43 (S.D.N.Y. 1993) and are reproduced in the appendix at 11a.

[1] Page references to the Appendix are shown by "(__a").

JURISDICTION

The judgment of the court of appeals was entered February 9, 1995. This court has jurisdiction to hear this petition pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This petition raises the question of whether this Court's decision in *Heck* permits the displacement, on a case-by-case basis, of the policies of repose which underlie statutes of limitation, and their related rules of accrual and tolling, for some Fourth Amendment claims, but not for others. Under the court of appeals' analysis, police officers facing a potential Fourth Amendment claim can never be certain when the applicable statute of limitations will begin to run and will have no "settled expectations", *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980), whether such a claim is time-barred. Accordingly, this Court should give further guidance as to the appropriate construction of *Heck*.

This case began with a search and seizure of respondent's car which petitioner conducted on September 25, 1989. (11a-12a). The search led to respondent's arrest and indictment. (12a). After an unsuccessful motion to suppress both the evidence seized and statements made by respondent, respondent proceeded to trial and was convicted. *Id.* The evidence seized was introduced during the trial. *Id.*

On January 19, 1993, the judgment of conviction was reversed and the indictment dismissed. *People v. Woods*, 189 A.D.2d 838, 592 N.Y.S.2d 748 (2d Dep't 1993). The Appellate Division held that the search of respondent's car was unlawful and that statements given by him to the police were involuntary. *Id.* at 841-43, 592 N.Y.S.2d at 750-52.

On May 6, 1993, more than three years after the events which gave rise to it, respondent filed a complaint in the

United States District Court for the Southern District of New York pursuant to 42 U.S.C. § 1983. (13a). Respondent invoked the district court's jurisdiction pursuant to 28 U.S.C. § 1343, as this is an action to redress the deprivation under color of State law of rights, privileges and immunities secured by the Constitution of the United States.

In his complaint, respondent alleged, *inter alia*, that petitioner had subjected him to an unreasonable search and seizure and had arrested him without probable cause, in violation of his rights under the Fourth and Fifth Amendments to the Constitution. (13a). On June 25, 1993, the district court (Goettel, J.) granted petitioner's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that respondent's claims were barred by the applicable three year statute of limitations and did not fall within any applicable tolling rules. (13a-23a). *Woods v. Candela*, 825 F. Supp. 43 (S.D.N.Y. 1993).

The Court of Appeals for the Second Circuit affirmed. (4a-10a). *Woods v. Candela*, 13 F.3d 574 (2d Cir. 1994). The court noted, preliminarily, that this action is governed by New York's three year statute of limitations (6a), and held that, for purposes of applying the statute, respondent's claims accrued on September 25, 1989, the day on which all of petitioner's actions with respect to respondent took place and when respondent first knew of those actions. (7a). The court rejected respondent's contention that his claims did not accrue until his conviction was overturned, relying on its earlier decision in *Mack v. Varelas*, 835 F.2d 995 (2d Cir. 1987), in which it held that the district court should stay, rather than dismiss, a timely filed section 1983 action which could be affected by pending state court proceedings. (7a-9a).

Respondent then filed a petition for a writ of certiorari. Subsequent to the filing of the petition, this Court decided *Heck*, where the question presented was "whether a state prisoner may challenge the constitutionality of his conviction in

a suit for damages under 42 U.S.C. § 1983." 114 S. Ct. at 2368. The Court concluded that such an action was not viable. *Id.* at 2372. In reaching this conclusion, the Court held that, as a general rule, there is no cause of action for damages under section 1983 in an action in which a judgment for the plaintiff "would necessarily imply the invalidity" of the plaintiff's conviction, *unless and until* the plaintiff can show that the conviction has been invalidated. *Id.* In so holding, the Court noted that no statute of limitations problem was presented while the plaintiff was attempting to invalidate the conviction because "the § 1983 claim has not yet arisen." *Id.* at 2374.

At the same time, this Court recognized an exception to the general rule when it concluded that where "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck*, 114 S. Ct. at 2372-73 (emphasis in original) (footnotes omitted). The Court gave as an example of a case falling within the exception "a suit for damages attributable to an allegedly unreasonable search. . . ." *Id.* at 2372, n.7. The Court went on to explain that "[b]ecause of doctrines like independent source and inevitable discovery, . . . , and especially harmless error, . . . , such a § 1983 action, even if successful, would not *necessarily* imply that the plaintiff's conviction was unlawful." *Id.* (emphasis in original) (citations omitted). However, the Court did not suggest that the availability of these doctrines was a prerequisite to invocation of the exception.

In October 1994, this Court granted respondent's petition, vacated the decision of the court of appeals and remanded the matter "for further consideration in light of *Heck*." *Woods v. Candela*, ___ U.S. ___, 115 S. Ct. 44 (1994).

After the submission of letter briefs, the court of appeals issued its decision on February 9, 1995, reversing the judg-

ment of the district court, holding that respondent's action was timely, and remanding the matter for further proceedings. The court concluded that respondent's claims "necessarily imply that his conviction was unlawful, and thus could not have been raised prior to the Appellate Division's reversal of his conviction." (3a). *Woods v. Candela*, 47 F.3d 546 (2d Cir. 1995) (*per curiam*).

The petition should be granted because it raises an important federal question concerning the construction of the decision in *Heck* which should be settled by this Court.

REASONS FOR GRANTING THE WRIT

THE SECOND CIRCUIT'S DECISION IS IN CONFLICT WITH THE PRINCIPLES ENUNCIATED BY THIS COURT IN *HECK*

Petitioner seeks certiorari to review the decision of the court of appeals insofar as it held that this Court's decision in *Heck* requires lower courts to utilize a case-by-case analysis and determine whether the particular Fourth Amendment claims raised by a plaintiff necessarily imply the invalidity of the underlying conviction. This decision by the court of appeals resulted in the conclusion that respondent's claim accrued only upon the invalidation of his conviction and, therefore, was timely, even though respondent knew all of the facts pertaining to his alleged "injury" and its cause at the time of the search and questioning, and lacked knowledge only as to the existence of an actionable wrong. The decision places petitioner and other police officers in an untenable position. As a result of the court of appeals' decision, some potential Fourth Amendment claims against police officers will be time-barred within a specific period running from the date of the search, while other potential Fourth Amendment claims will not be time-barred until that same period runs

from some later, and unknown, date when the underlying conviction is invalidated, if ever.[2]

Both the district court and the court of appeals in its initial opinion had concluded that respondent's cause of action for violation of his rights under the Fourth and Fifth Amendments accrued at the time of the search and questioning. (14a-15a; 7a). These decisions were based on settled authority that the statute of limitations begins to run when the claim "accrues", *King v. New York Telephone Co., Inc.*, 785 F.2d 31 (2d Cir. 1986), which date, for claims brought pursuant to 42 U.S.C. § 1983, is a matter of federal law. *Morse v. University of Vermont*, 973 F.2d 122, 125 (2d Cir. 1992). In determining the accrual date, the focus is not on a would-be plaintiff's knowledge of the legal basis for a claim, but rather on his knowledge of the facts giving rise to the claim. *United States v. Kubrick*, 444 U.S. 111, 122-25 (1979). Accordingly, a cause of action accrues when "the plaintiff 'knows or has reason to know' of the injury that is the basis of his action." *Pauk v. Board of Trustees*, 654 F.2d 856, 859 (2d Cir. 1981) (citation omitted), *cert. denied*, 455 U.S. 1000 (1982); *see also Johnson v. Johnson County Commission Board*, 925 F.2d 1299, 1301 (10th Cir. 1991); *McCune v. City of Grand Rapids*, 842 F.2d 903, 906 (6th Cir. 1988); *Deary v. Three Un-named Police Officers*, 746 F.2d 185, 193 (3d Cir. 1984).

In this case, since dismissal of the charges against respondent was not an element of any of his claims, respondent did not need to gain any further factual knowledge of petitioner's actions which might form the basis for a claim in order to commence suit. According to respondent, all of petitioner's actions with respect to the alleged unreasonable search and seizure, the alleged arrest without probable cause, and the alleged denial of respondent's right to remain silent took

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[2] In the instant case, according to the court of appeals, the statute of limitations did not begin to run until January 1993, almost three and one-half years after the search, and the case could have been commenced as late as January 1996.

place on September 25, 1989. (11a-12a). Respondent was clearly aware of those actions, which occurred in his presence, *id.*, and which he then made the basis for his pre-trial motion to suppress (12a). Therefore, under the law as it existed at the time of the search, respondent's claims accrued in September 1989, when the search occurred. *See Hackenburg v. Zukowski*, 754 F. Supp. 409, 410-11 (M.D. Pa. 1991) (rejecting the argument that plaintiffs' "civil rights action did not accrue until the validity of the search and seizure had been adjudicated in the state court criminal proceeding").

This Court's decision in *Heck* should not be read to alter this well-settled conclusion insofar as it applies to claims for unreasonable searches and seizures. In *Heck*, 114 S. Ct. at 2372, the Court held that, in general, there is no cause of action for damages under section 1983 in an action in which a judgment for the plaintiff "would necessarily imply the invalidity" of the plaintiff's conviction, unless and until plaintiff can show that the conviction has been invalidated. However, the Court also concluded that where "the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Id.* at 2372-73 (emphasis in original) (footnotes omitted). The Court gave as an example "a suit for damages attributable to an allegedly unreasonable search. . . ." *Id.* at 2372, n.7. This action by respondent, alleging violation of "his Fourth Amendment right to be free from unreasonable searches and seizures without probable cause and his Fifth Amendment right to remain silent," falls directly within that exception and, therefore, should have been dismissed.

The court below reached a contrary result by drawing a distinction between those unreasonable searches which imply the unlawfulness of the conviction and those which do not. This distinction is not supported by the decision in *Heck*. While it is true that not every search and seizure claim will be subject

to the doctrines cited by the Court, *e.g.*, harmless error, it is apparent that this Court intended to establish an across-the-board exception for all unreasonable search cases, not the case-by-case application employed by the court of appeals. Anything less will involve the district courts in a premature evaluation of the validity of the underlying claim, *i.e.*, precisely the sort of analysis that the general rule and its exception were intended to forestall.

In addition, the court of appeals' interpretation will bifurcate unreasonable search cases into two categories and will impose new burdens on both potential plaintiffs and defendants, as well as the district courts. The court of appeals' decision will require a potential plaintiff to surmise, within the limitation period running from the date of the search and seizure, into which category his claims fall. The plaintiff will have to assess whether the facts of his Fourth Amendment claim allow him to wait for a possible reversal of his conviction before proceeding, or require him to institute suit during the period running from the search and seizure because of the risk that his action may later be held to be untimely if his conviction is reversed after the limitation period has passed. In those cases in which the plaintiffs choose to wait for possible reversals, police officers will not know whether the applicable limitation period has run and, therefore, that there is no need to preserve evidence relating to the search and seizure, or whether they must continue to linger, waiting for a process server who may never come.

Moreover, such a bifurcated system will result in additional litigation as many plaintiffs will commence initial protective actions to obtain judicial determinations that their claims have not yet accrued. In contrast, a plain and simple rule that all search and seizure cases accrue when the plaintiff has knowledge of the factual basis for his claim will put both plaintiffs and police officers on clear notice of the status of such claims and avoid the various burdens which will be imposed on the

parties and the district courts as a result of the court of appeals' decision.

CONCLUSION

For the reasons set forth herein, the petition for a writ of certiorari should be granted.

Dated: New York, New York
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